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Acting United States Secretary of Labor*

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

JULIE A. SU,
Acting Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

2 POTO, INC., d/b/a ENTRE NOUS
FRENCH BISTRO, a California
Corporation; JEAN-CHRISTOPHE
FEBBRARI, individually and as managing
agent of the entity defendant; MATHIAS
WAKRAT, individually and as managing
agent of the entity defendant
Defendants.

Case No. 2:23-cv-10871-MRA
(BFMx)

**CONSENT JUDGMENT AND
ORDER**

Plaintiff, Julie A. Su, Acting Secretary of Labor, United States Department of Labor (“Acting Secretary”) and Defendants 2 Poto Inc., d/b/a Entre Nous French Bistro, Jean-Christophe Febbrari, and Mathias Wakrat (hereinafter “Defendants”) (collectively the “Parties”), have agreed to resolve the matter in controversy in this civil action and consent to the entry of this Consent Judgment in accordance herewith:

A. The Acting Secretary filed a Complaint naming Defendants and alleging that they violated Sections 3(m)(2)(B), 11(c), and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended (“FLSA”), 29 U.S.C. §§ 203(m)(2)(B),

1 211(c), and 215(a)(5). The Acting Secretary also alleged that Defendants
2 misclassified several employees as independent contractors.

3 B. The Parties agree to waive findings of fact and conclusions of law and
4 agree to the entry of this Consent Judgment and Order without further contest.

5 C. The Parties stipulate that the Court has jurisdiction over the Parties
6 and the subject matter of this civil action and that venue lies within the Central
7 District of California.

8 D. Defendants agree herein to resolve all allegations of the Acting
9 Secretary's Complaint.

10 E. The Acting Secretary conducted an investigation of Defendants
11 pursuant to the FLSA covering the period January 13, 2020 through January 12,
12 2023.

13 F. Defendants stipulate that at all relevant times they operated a
14 restaurant in Pasadena, California, and were an enterprise engaged in commerce or
15 in the production of goods for commerce within the meaning of Section 3(s)(1)(A)
16 of the FLSA, 29 U.S.C. § 203(s)(1)(A).

17 G. Defendants stipulate that at all relevant times they were employers of
18 their employees listed on Exhibit A to this Consent Judgment and Order within the
19 meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

20 **PERMANENT INJUNCTION**

21 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that,
22 pursuant to Section 17 of the FLSA, 29 U.S.C. § 217, and the inherent authority of
23 the Court, Defendants, their officers, agents, servants, employees, successor
24 companies, parties in interest, and all persons and entities acting at its direction or
25 in concert or participation with them, are permanently enjoined and restrained from
26 violating the FLSA, including through any of the following manners:
27
28

1 1. Defendants shall not, contrary to Sections 11(c) and 15(a)(5), 29
2 U.S.C. §§ 211(c) and 215(a)(5), fail to make, keep, and preserve accurate records
3 of tips as required under 29 C.F.R. § 516.28(b).

4 2. Defendants shall not, contrary to Section 3(m)(2)(B) of the FLSA, 29
5 U.S.C. §§ 203(m)(2)(B), keep any of the tips received by their employees,
6 including by using any such tips to fund Defendant Entre Nous's business
7 operations, withholding credit card or cash tips, or allowing owners, managers, or
8 supervisors to keep a portion of employees' tips.

9 3. Defendants shall classify all the front of the house workers (servers,
10 bartenders, hosts, bussers, and food runners, e.g.) and back of the house workers
11 (chefs, cooks, dishwashers, e.g.) as employees and not independent contractors.
12 This does not include workers retained as contractors for specific project-based
13 limited purposes including but not limited to menu creation and related chef
14 training, marketing, website design, etc.

15 4. Defendants, their officers, agents, servants, employees, successor
16 companies, parties in interest, and all persons and entities acting at its direction or
17 in concert or participation with them, are permanently enjoined and restrained from
18 in any way directly or indirectly, demanding, requiring return of, or accepting any
19 of the tip compensation or liquidated damages from any of the employees listed on
20 the attached Exhibit A. Defendants shall not threaten or imply that adverse action
21 will be taken against any employee because of their receipt of funds due under this
22 Consent Judgment. Violation of this Paragraph may subject Defendants to
23 equitable and legal damages, including punitive damages and civil contempt.

24 5. Defendants, jointly and severally, shall not continue to withhold the
25 payment of \$106,500 in tips hereby found to be due by Defendants under the
26 FLSA to employees, as a result of their employment by Defendants during the
27 period of January 13, 2020 through January 12, 2023.
28

JUDGMENT

FURTHER, JUDGMENT IS HEREBY ENTERED, pursuant to Section 16(c) of the FLSA, 29 U.S.C. § 216(c), in favor of the Acting Secretary and against Defendants in the total amount of **\$215,000**. Pursuant to this Judgment, **IT IS HEREBY ORDERED THAT**

6. Defendants shall pay \$106,500 in tips to Defendants' present and former employees who are identified in **Exhibit A**, plus an additional equal amount of \$106,500 as liquidated damages to the employees identified in **Exhibit A**, plus \$2,000 designated as civil money penalties under 29 U.S.C. § 216(e).

Pursuant to this Judgment, **IT IS HEREBY ORDERED THAT:**

7. Defendants shall jointly and severally pay the tips and liquidated damages hereby due under the FLSA and this Consent Judgment to the employees listed on Exhibit A, with such amounts including post-judgment interest. Defendants shall accomplish this by making a down payment of \$50,000 by August 1, 2024. Defendants shall make thirty-six (36) monthly installment payments pursuant to the payment schedule set forth in Exhibit B, with the first of such payments commencing on September 1, 2024. Defendants may pre-pay the amounts owed via the payment plan at any time before the end of the installment payment plan as set forth in Exhibit B, reducing the interest accordingly for the adjusted term.

8. Additionally, Defendants shall jointly and severally pay civil money penalties in the amount of \$2,000.00 pursuant to Section 216(e)(2) of the FLSA, 29 U.S.C. § 216(e)(2) no later than August 1, 2027, per the payment schedule set forth in Exhibit B. Such penalties are hereby assessed against Defendants and finally determined, pursuant to FLSA Section 16(e), 29 U.S.C. § 216(e). Defendants waive the right to a hearing with respect to this assessment of civil money penalties.

1 9. As set forth in Exhibit B, Defendants shall first pay the liquidated
2 damages, followed by back wages, followed by civil money penalties.

3 10. To accomplish the requirements of Paragraphs 6, 7, and 8, Defendants
4 shall:

5 a. No later than thirty (30) days following the entry of this
6 Consent Judgment, deliver to the Wage and Hour Division the last known contact
7 information for all current and former employees listed in Exhibit A, including last
8 known street address, email address, telephone number, and social security
9 number.

10 b. Make the payments for tips, liquidated damages, and post
11 judgment interest required by this Consent Judgment online by ACH transfer,
12 credit card, debit card, or digital wallet by going to
13 <https://www.pay.gov/public/form/start/77761888>, or by going to www.pay.gov and
14 searching “WHD Back Wage Payment – WE Region.” Payments shall reference
15 Case Number 1976103.

16 c. Make the civil money penalty payment required by this Consent
17 Judgment online by ACH transfer, credit card, debit card, or digital wallet by going
18 to <https://www.pay.gov/public/form/start/77743734>, or by going to www.pay.gov
19 and searching “WHD Civil Money Penalty - WE Region.” Payments shall
20 reference Case Number 1976103.

21 11. In the event of any default in the timely making of any payment due
22 hereunder, the full amount due under this Judgment which then remains unpaid,
23 plus post-judgment interest at the rate of 10% per year, from the date of this
24 Judgment until paid in full, shall become due and payable upon the Acting
25 Secretary’s sending by ordinary mail a written demand to the last business address
26 of Defendants then known to the Acting Secretary with electronic copies also
27 concurrently e-served on Defendants’ counsel of record.
28

1 12. The Acting Secretary shall distribute the payments described in
2 Paragraph 5 to employees listed in Exhibit A, or if necessary, to the employees'
3 estates. If any monies are not distributed to employees within three years from the
4 date of receipt of payment from Defendants because of an inability to locate the
5 proper persons or because of their refusal to accept it, the Acting Secretary shall
6 deposit the payment into the Treasury of the United States of America as
7 miscellaneous receipts under 29 U.S.C. § 216(c).

8 13. Within thirty (30) days of the entry of this Judgment, Defendants shall
9 hire a third party to conduct training (to be completed within ninety (90) days
10 thereafter) for all of Defendants' supervisors, managers, and persons performing
11 payroll duties on the requirements of the FLSA, including the tip, recordkeeping,
12 and worker classification provisions. The training shall include: (a) tips practices
13 that adhere to FLSA requirements; (b) recordkeeping; and (c) proper classification
14 of workers. For the purposes of this provision Defendants' counsel shall be
15 considered a third party.

16 14. Within fifteen (15) days of the training enumerated in Paragraph 13,
17 Defendants shall deliver to the Wage and Hour Division evidence that all
18 supervisors attended the training. Evidence may be provided in the form of a sign-
19 in sheet and may be sent by electronic mail to Aleksanian.Gayane@dol.gov.

20 15. This Consent Judgment may be signed in multiple counterparts and
21 transmitted by facsimile or by electronic mail or by any other electronic means
22 intended to preserve the original graphic and pictorial appearance of a Party's
23 signature, each of which shall be deemed an original, but all of which together
24 shall constitute one and the same instrument.

25 **IT IS FURTHER ORDERED** that the filing, pursuit, and/or resolution of
26 this proceeding with the entry of this Judgment shall not act as or be asserted as a
27 bar to any action or claim under FLSA Section 16(b), 29 U.S.C. § 216(b), as to any
28 employee not named on the attached **Exhibit A**, nor as to any employee named on

1 the attached **Exhibit A** for any period not specified therein, nor as to any employer
2 other than Defendants.

3 **IT IS FURTHER ORDERED** that each party shall bear their own fees,
4 costs, and other expenses incurred by such party in connection with any stage of
5 this proceeding, including but not limited to attorneys' fees, which may be
6 available under the Equal Access to Justice Act, as amended, to the date of entry of
7 the Judgment herein; and

8 **IT IS FURTHER ORDERED** that this Court retains jurisdiction of this
9 action for purposes of enforcing compliance with the terms of this Consent
10 Judgment.

11 **IT IS SO ORDERED.**

12 DATED this 20th day of June, 2024



13
14 Mónica Ramírez Almadani
15 United States District Judge

16 For Plaintiff

17
18 SEEMA NANDA
19 Solicitor of Labor
20 MARC A. PILOTIN
21 Regional Solicitor
22 BORIS ORLOV
23 Counsel for Wage and Hour

24 /s/ Karla Malagon Castillo
25 KARLA MALAGON CASTILLO
26 Trial Attorney
27
28

1 For Defendants

2
3 2 POTO, INC. d/b/a Entre Nous French Bistro, a California Corporation

4 By:

5 [name/title]

6 Jean-Christophe Febbrari

7 
8 Mathias Wakrat

9
10
11 PALOMA PERACCHIO

12 Attorney for Defendants

1 For Defendants

2 2 POTO, INC. d/b/a Entre Nous French Bistro, a California Corporation

3 By:

4 [name/title]

5 

6 Jean-Christophe Febbrari

7
8 Mathias Wakrat

9
10 

11 PALOMA PERACCHIO

12 Attorney for Defendants

EXHIBIT A

	First Name	Last Name	Start Period	End Period	Tips	Liquidated Damages	Total	Interest	Grand Total
1	Joel	Asuncion	11/10/2020	11/10/2020	\$ 67.88	\$ 67.88	\$ 135.76	\$ 6.61	\$ 142.37
2	Jaime	Avila	4/26/2022	5/10/2022	\$ 303.17	\$ 303.17	\$ 606.34	\$ 29.53	\$ 635.87
3	Miguel	Castillo	7/21/2020	1/3/2023	\$ 30,265.17	\$ 30,265.17	\$ 60,530.34	\$ 2,947.65	\$ 63,477.99
4	Alberto	Diaz	6/7/2022	7/5/2022	\$ 317.09	\$ 317.09	\$ 634.18	\$ 30.88	\$ 665.06
5	Christophe	Giovanelli	2/2/2021	1/4/2022	\$ 11,647.37	\$ 11,647.37	\$ 23,294.74	\$ 1,134.38	\$ 24,429.12
6	Laurent	Grangeon	6/23/2020	6/22/2021	\$ 15,605.72	\$ 15,605.72	\$ 31,211.44	\$ 1,519.90	\$ 32,731.34
7	Gerard	Loff Fernandes	5/25/2021	1/3/2023	\$ 21,107.73	\$ 21,107.73	\$ 42,215.46	\$ 2,055.77	\$ 44,271.23
8	Talia L	Morga	6/23/2020	6/23/2020	\$ 81.60	\$ 81.60	\$ 163.20	\$ 7.95	\$ 171.15
9	Kurt	Moulic	6/22/2021	3/15/2022	\$ 3,367.93	\$ 3,367.93	\$ 6,735.86	\$ 328.02	\$ 7,063.88
10	Christian	Ortega	6/22/2021	9/13/2022	\$ 1,333.39	\$ 1,333.39	\$ 2,666.78	\$ 129.86	\$ 2,796.64
11	Emiliano	Ramirez	10/27/2020	11/10/2020	\$ 297.24	\$ 297.24	\$ 594.48	\$ 28.95	\$ 623.43
12	Miguel	Ramirez	8/2/2022	1/3/2023	\$ 2,422.77	\$ 2,422.77	\$ 4,845.54	\$ 235.96	\$ 5,081.50
13	Jonathan	Reyes	6/23/2020	7/21/2020	\$ 146.89	\$ 146.89	\$ 293.78	\$ 14.31	\$ 308.09
14	Marco	Reyes	9/1/2020	4/27/2021	\$ 1,593.71	\$ 1,593.71	\$ 3,187.42	\$ 155.22	\$ 3,342.64
15	Gustavo	Serrano	4/26/2022	1/3/2023	\$ 4,229.00	\$ 4,229.00	\$ 8,458.00	\$ 411.88	\$ 8,869.88
16	John	Stiens	6/23/2020	6/23/2020	\$ 58.29	\$ 58.29	\$ 116.58	\$ 5.68	\$ 122.26
17	Joseph	Storbeck	6/22/2021	1/3/2023	\$ 13,160.64	\$ 13,160.64	\$ 26,321.28	\$ 1,281.77	\$ 27,603.05
18	Nicola	Tangorra	10/12/2021	12/1/2021	\$ 494.41	\$ 494.41	\$ 988.82	\$ 48.15	\$ 1,036.97
				Total:	\$106,500.00	\$106,500.00	\$213,000.00	\$ 10,372.47	\$223,372.47

EXHIBIT B

Total Amount Due	\$215,000.00
Down Payment	\$50,000.00
Amount Still Due	\$165,000.00
Interest Rate	4.00%
Period In Years	3
Start Date of Payments	9/1/2024

PAYMENT SUMMARY

Monthly Payment	\$4,871.46
Number of Payments	36
Total interest	\$10,372.47
Total Cost of Payment	\$175,372.47

Employer
Name:

Entre Nous

Case ID
Number:

1976103

PMT NO.	PAYMENT DATE	BEGINNING BALANCE	PAYMENT	PRINCIPAL	INTEREST	ENDING BALANCE	Category
1	9/1/2024	\$165,000.00	\$4,871.46	\$4,321.46	\$550.00	\$160,678.54	Liquidated Damages
2	10/1/2024	\$160,678.54	\$4,871.46	\$4,335.86	\$535.60	\$156,342.68	Liquidated Damages
3	11/1/2024	\$156,342.68	\$4,871.46	\$4,350.32	\$521.14	\$151,992.36	Liquidated Damages
4	12/1/2024	\$151,992.36	\$4,871.46	\$4,364.82	\$506.64	\$147,627.55	Liquidated Damages
5	1/1/2025	\$147,627.55	\$4,871.46	\$4,379.37	\$492.09	\$143,248.18	Liquidated Damages
6	2/1/2025	\$143,248.18	\$4,871.46	\$4,393.96	\$477.49	\$138,854.22	Liquidated Damages
7	3/1/2025	\$138,854.22	\$4,871.46	\$4,408.61	\$462.85	\$134,445.61	Liquidated Damages
8	4/1/2025	\$134,445.61	\$4,871.46	\$4,423.31	\$448.15	\$130,022.30	Liquidated Damages
9	5/1/2025	\$130,022.30	\$4,871.46	\$4,438.05	\$433.41	\$125,584.25	Liquidated Damages
10	6/1/2025	\$125,584.25	\$4,871.46	\$4,452.84	\$418.61	\$121,131.41	Liquidated Damages
11	7/1/2025	\$121,131.41	\$4,871.46	\$4,467.69	\$403.77	\$116,663.72	Liquidated Damages
12	8/1/2025	\$116,663.72	\$4,871.46	\$4,482.58	\$388.88	\$112,181.15	Liquidated Damages/ Backwages
13	9/1/2025	\$112,181.15	\$4,871.46	\$4,497.52	\$373.94	\$107,683.63	Backwages
14	10/1/2025	\$107,683.63	\$4,871.46	\$4,512.51	\$358.95	\$103,171.11	Backwages
15	11/1/2025	\$103,171.11	\$4,871.46	\$4,527.55	\$343.90	\$98,643.56	Backwages
16	12/1/2025	\$98,643.56	\$4,871.46	\$4,542.65	\$328.81	\$94,100.91	Backwages

17	1/1/2026	\$94,100.91	\$4,871.46	\$4,557.79	\$313.67	\$89,543.13	Backwages
18	2/1/2026	\$89,543.13	\$4,871.46	\$4,572.98	\$298.48	\$84,970.15	Backwages
19	3/1/2026	\$84,970.15	\$4,871.46	\$4,588.22	\$283.23	\$80,381.92	Backwages
20	4/1/2026	\$80,381.92	\$4,871.46	\$4,603.52	\$267.94	\$75,778.40	Backwages
21	5/1/2026	\$75,778.40	\$4,871.46	\$4,618.86	\$252.59	\$71,159.54	Backwages
22	6/1/2026	\$71,159.54	\$4,871.46	\$4,634.26	\$237.20	\$66,525.28	Backwages
23	7/1/2026	\$66,525.28	\$4,871.46	\$4,649.71	\$221.75	\$61,875.58	Backwages
24	8/1/2026	\$61,875.58	\$4,871.46	\$4,665.21	\$206.25	\$57,210.37	Backwages
25	9/1/2026	\$57,210.37	\$4,871.46	\$4,680.76	\$190.70	\$52,529.61	Backwages
26	10/1/2026	\$52,529.61	\$4,871.46	\$4,696.36	\$175.10	\$47,833.25	Backwages
27	11/1/2026	\$47,833.25	\$4,871.46	\$4,712.01	\$159.44	\$43,121.24	Backwages
28	12/1/2026	\$43,121.24	\$4,871.46	\$4,727.72	\$143.74	\$38,393.52	Backwages
29	1/1/2027	\$38,393.52	\$4,871.46	\$4,743.48	\$127.98	\$33,650.04	Backwages
30	2/1/2027	\$33,650.04	\$4,871.46	\$4,759.29	\$112.17	\$28,890.75	Backwages
31	3/1/2027	\$28,890.75	\$4,871.46	\$4,775.16	\$96.30	\$24,115.60	Backwages
32	4/1/2027	\$24,115.60	\$4,871.46	\$4,791.07	\$80.39	\$19,324.52	Backwages
33	5/1/2027	\$19,324.52	\$4,871.46	\$4,807.04	\$64.42	\$14,517.48	Backwages
34	6/1/2027	\$14,517.48	\$4,871.46	\$4,823.07	\$48.39	\$9,694.42	Backwages
35	7/1/2027	\$9,694.42	\$4,871.46	\$4,839.14	\$32.31	\$4,855.27	Backwages
36	8/1/2027	\$4,855.27	\$4,871.46	\$4,855.27	\$16.18	\$0.00	Backwages/Civil Money Penalties